

1 BILL LOCKYER  
Attorney General  
2 LOUIS VERDUGO, JR.  
Senior Assistant Attorney General  
3 SUZANNE M. AMBROSE  
Supervising Deputy Attorney General  
4 GLORIA L. CASTRO,  
Deputy Attorney General  
5 300 South Spring Street, Room 5212  
Los Angeles, California 90013-1230  
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8 Attorneys for the Plaintiff People of the State of California ex rel.  
Bill Lockyer, Attorney General of the State of California

9  
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN DIEGO  
12

13 PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
14 BILL LOCKYER, ATTORNEY GENERAL OF THE  
STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 CITY OF DEL MAR CITY COUNCIL, AND DOES  
18 1 THROUGH 50, INCLUSIVE,

19 Defendants,

Case No.:

**PETITION FOR WRIT OF  
MANDATE**

**[Fees Exempt, Gov. Code, §§ 6103  
and 6103.5]**

Filed concurrently with:

1) Stipulation for Entry of Judgment;  
2) [Proposed] Judgment.

Date:  
Time:  
Place:  
Dept.:

**HON.**

22  
23 The People of the State of California, by and through Bill Lockyer, Attorney General of  
24 the State of California, allege as follows:

25 **INTRODUCTION**

26 1. Government Code section 4450 et seq. requires that all buildings, structures,  
27 sidewalks, curbs and related facilities constructed or remodeled with public funds after January 1,  
28 1969, be accessible to and usable by persons with disabilities and that they comply with the

1 building standards contained in regulations adopted by the California Building Standards  
2 Commission set forth at Title 24, Part 2, Volume 1 of the California Code of Regulations (“Title  
3 24”).

4 2. Government Code section 4453 provides that where municipal funds are utilized, the  
5 governing body of the municipality has a mandatory duty to enforce Government Code section  
6 4450 et seq. and Title 24 with respect to publicly funded buildings, structures, sidewalks, curbs  
7 and related facilities located within the city’s jurisdiction.

8 3. Government Code section 4452 provides that any unauthorized deviation from Title 24  
9 regulations shall be rectified by full compliance within 90 days after confirmation of the deviation.

10 4. Health and Safety Code section 19955 et seq. requires that all privately funded public  
11 accommodations and facilities constructed or remodeled after January 1, 1970, be accessible to  
12 and usable by persons with disabilities, and that they comply with the provisions of Government  
13 Code section 4450 et seq. and the building standards contained in Title 24.

14 5. Health and Safety Code section 19958 provides that, the building department of a city  
15 has the mandatory duty to enforce Health and Safety Code section 19955 et seq. and Title 24 with  
16 respect to privately-funded public accommodations and facilities within a municipality’s  
17 jurisdiction.

18 **THE PARTIES**

19 6. Plaintiff Bill Lockyer is the duly elected Attorney General of the State of California.  
20 The Attorney General is empowered by the California Constitution to take whatever action is  
21 necessary to see that the laws of the State are uniformly and adequately enforced. (Cal. Const.,  
22 art. V, § 13.) This authority extends to taking whatever action is necessary to ensure that local  
23 governing bodies and local building departments meet their mandatory duties to enforce  
24 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq. and the  
25 building standards that are set forth in Title 24. Government Code section 4458 and Health and  
26 Safety Code section 19955 authorize the Attorney General to enforce these statutory provisions  
27 and regulations.

28 7. The defendant, City of Del Mar City Council (“City Council”), is a governing body

1 within the meaning of Government Code section 4453 and, therefore, has a mandatory duty to  
2 enforce Government Code section 4450 et seq. and Title 24 with respect to publicly funded  
3 buildings, structures, sidewalks, curbs and related facilities that are constructed or altered with  
4 city funds.

5 8. Defendant City Council has not established a building department within the territorial  
6 area of the City of Del Mar within the meaning of Health and Safety Code section 19958.  
7 However, defendant City Council has contracted with the County of San Diego for the  
8 performance of building, plumbing and electrical inspection services. Having declined to operate  
9 a building department, defendant City Council has the responsibility to enforce Health and Safety  
10 Code section 19958 et seq. and Title 24 with respect to privately funded public accommodations  
11 and facilities that are subject to the jurisdiction of the City of Del Mar.

12 9. Defendants Does 1 through 50, inclusive, are sued under fictitious names. Their true  
13 names and capacities are unknown to Plaintiff, and therefore, Plaintiff sues them in this fictional  
14 capacity. When their true names and capacities are ascertained, Plaintiff will amend this Petition  
15 and Complaint by inserting their true names and capacities herein.

16 **VENUE AND JURISDICTION**

17 10. This Court is the appropriate venue for this case because Defendant City of Del Mar  
18 is located within San Diego County. Moreover, this Court has jurisdiction over causes of action  
19 alleging the failure to carry out mandatory statutory responsibilities pursuant to Government Code  
20 section 4450 et seq. and Health and Safety Code sections 19955 et seq.

21 **EXHAUSTION OF REMEDIES**

22 11. The State is exempted from having to comply with applicable claims procedures for suits  
23 brought against local public entities pursuant to Government Code section 905, subdivision (i).

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1 **ALLEGATIONS**

2 **FIRST CAUSE OF ACTION**

3 **(MANDAMUS RELIEF–FAILURE TO MEET MANDATORY DUTY TO ENFORCE**  
4 **GOVERNMENT CODE SECTION 4450 ET SEQ., HEALTH AND SAFETY CODE**  
5 **SECTION 19955 ET SEQ., AND TITLE 24)**  
6 **(Against Defendant and Does 1-50, inclusive.)**

7 12. Plaintiff realleges and incorporates the allegations of paragraphs 1 through 11 as if  
8 fully set forth herein.

9 13. On or about May 8, 2003, pursuant to the provisions of Government Code section  
10 11180 et seq., Plaintiff commenced an investigation to determine whether the City of Del Mar  
11 was meeting its obligation to enforce state disabled access laws and regulations as required by  
12 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title  
13 24.

14 14. On or about June 10-11, 2003, Plaintiff confirmed Title 24 violations at the following  
15 privately funded public accommodations located at the Del Mar Plaza Marketplace, 1555 Camino  
16 Del Mar, Del Mar:

17 a. The parking structure of the Del Mar Plaza Marketplace located at 1555  
18 Camino Del Mar does not comply with the 8-foot, 2-inch, clearance required for accessible  
19 parking under Title 24. The Del Mar Plaza Marketplace is subject to the jurisdiction of Defendant  
20 City Council and is a privately funded public accommodation or facility within the meaning of  
21 Health and Safety Code section 19955 et seq.;

22 b. Epazote Restaurant located at 1555 Camino Del Mar, Suite 322, has an  
23 inaccessible pedestrian bridge connecting the main restaurant area to the outdoor seating area, the  
24 part of the restaurant with a white water view, that does not comply with Title 24. The bridge  
25 does not comply with Title 24 because it is constructed with steps on both sides, and the slope of  
26 the bridge exceeds the maximum 8.33% slope allowed by Title 24. Moreover, an emergency exit  
27 from the outdoor seating area is constructed with only stairs to access a walkway at a lower level  
28 in violation of Title 24. A sign was posted at the restaurant entrance that advises patrons in

1 wheelchairs to request assistance if they wish to be seated outside. In addition, Epazote has a  
2 restroom that lacks the 60-inch wheelchair turning radius required by Title 24. Epazote  
3 Restaurant is subject to the jurisdiction of Defendant City Council and is a privately funded public  
4 accommodation or facility within the meaning of Health and Safety Code section 19955 et seq.;

5 c. Chico's boutique located at 1555 Camino Del Mar, Suite 314, has an entry  
6 door that measures 31 inches in the open position, maintained throughout business hours, in  
7 violation of Title 24. Chico's is subject to the jurisdiction of Defendant City Council and is a  
8 privately funded public accommodation or facility within the meaning of Health and Safety Code  
9 section 19955 et seq.;

10 d. Garys Cole-Haan Shoes located at 1555 Camino Del Mar, Suite 304, has an  
11 entry door that measures 31 inches in the open position, maintained throughout business hours, in  
12 violation of Title 24. Garys Cole-Haan Shoes is subject to the jurisdiction of Defendant City  
13 Council and is a privately funded public accommodation or facility within the meaning of Health  
14 and Safety Code section 19955 et seq.;

15 e. Garys Studio clothing store located at 1555 Camino Del Mar, Suite 305, has an  
16 entry door that measures 31 inches in the open position, maintained throughout business hours, in  
17 violation of Title 24. Garys Studio is subject to the jurisdiction of Defendant City Council and is  
18 a privately funded public accommodation or facility within the meaning of Health and Safety Code  
19 section 19955 et seq.; and

20 f. Black Market clothing store located at 1555 Camino Del Mar, Suite 313, has an  
21 entry door that measures 31 inches in the open position, maintained throughout business hours, in  
22 violation of Title 24. Black Market is subject to the jurisdiction of Defendant City Council and is  
23 a privately funded public accommodation or facility within the meaning of Health and Safety Code  
24 section 19955 et seq.

25 15. On or about June 10-11, 2002, Plaintiff confirmed that L'Auberge Del Mar Resort  
26 and Spa located at 1540 Camino Del Mar did not comply with Title 24, because the resort has  
27 individual and banks of public telephones which are not positioned at accessible heights. The  
28 L'Auberge Del Mar Resort and Spa is subject to the jurisdiction of Defendant City Council and is

1 a privately funded public accommodation or facility within the meaning of Health and Safety Code  
2 section 19955 et seq.

3 16. On or about June 10-11, 2003, Plaintiff confirmed that the First Republic Bank  
4 located at 1110 Camino Del Mar did not comply with Title 24 because the paths of travel measure  
5 10% and 10.3% slopes in excess of the maximum 8.33% permitted by Title 24. The ramps also  
6 lack the appropriate signage required by Title 24. In violation of Title 24, no other accessible  
7 route into the bank exists. The First Republic Bank is subject to the jurisdiction of Defendant  
8 City Council and is a privately funded public accommodation or facility within the meaning of  
9 Health and Safety Code section 19955 et seq.

10 17. On or about June 10-11, 2003, Plaintiff confirmed that the office building located at  
11 1104 Camino Del Mar, does not comply with Title 24, because the restroom in the common area  
12 has no knee clearance at a lavatory vanity cabinet. Plaintiff is informed and believes that the office  
13 building is owned by Briggs & Briggs, LLC, and that the building's business tenants include, but  
14 are not limited to, the Del Mar Chamber of Commerce, Del Mar Regional Chambers, J.R.  
15 Marketing, International Media, Heritage Escrow, McGuigan & Assocs., Venture Management  
16 Assocs., other private medical and legal offices, and businesses. The property located at 1224  
17 Camino Del Mar is subject to the jurisdiction of Defendant City Council and is a privately funded  
18 public accommodation or facility within the meaning of Health and Safety Code section 19955 et  
19 seq.

20 18. On or about June 10-11, 2003, Plaintiff confirmed that Davidson Communities, a  
21 residential builder, located at 1302 Camino Del Mar does not comply with Title 24, because it has  
22 a front door that measures only 29 inches in the open position in violation of Title 24. Davidson  
23 Communities is subject to the jurisdiction of Defendant City Council and is a privately funded  
24 public accommodation or facility within the meaning of Health and Safety Code section 19955 et  
25 seq.

26 19. On or about June 10-11, 2003, Plaintiff confirmed that the Canterbury Del Mar  
27 Building located at 1011 Camino Del Mar does not comply with Title 24, because it has several  
28 ramps with excessively steep ramps connecting the parking area to the building walkways in

1 violation of Title 24. Further, no signage directs a safe path of travel as required by Title 24.  
2 Non-original additions to the original building footprint exist, but no tenant improvement permits  
3 are on file at the County of San Diego. The Canterbury Del Mar Building is subject to the  
4 jurisdiction of Defendant City Council and is a privately funded public accommodation or facility  
5 within the meaning of Health and Safety Code section 19955 et seq.

6 20. On or about June 10-11, 2003, Plaintiff confirmed that the Board and Brew restaurant  
7 located at 1212 Camino Del Mar is in violation of Title 24 because it has a single ramp with a  
8 slope of 14%, in excess of the maximum 8.33% allowed by Title 24. That ramp further ends in a  
9 parking lot with no accessible parking in violation of Title 24. The Board and Brew is subject to  
10 the jurisdiction of Defendant City Council and is a privately funded public accommodation or  
11 facility within the meaning of Health and Safety Code section 19955 et seq.

12 21. On or about June 10-11, 2003, Plaintiff confirmed that Bully's Restaurant located at  
13 1404 Camino Del Mar is in violation of Title 24, because it had installed a newly remodeled  
14 restroom that is inaccessible due to the existence of different floor levels and narrow  
15 passageways. Bully's is subject to the jurisdiction of Defendant City Council and is a privately  
16 funded public accommodation or facility within the meaning of Health and Safety Code section  
17 19955 et seq.

18 22. On or about June 10-11, 2003, Plaintiff confirmed that the Starbucks coffee shop  
19 located at 1435 Camino Del Mar is in violation of Title 24, because it has primary entrances that  
20 measure 27 ½ inches when opened 90 degrees from the closed position, in violation of the 32-inch  
21 clearance required by Title 24. Starbucks is subject to the jurisdiction of Defendant City Council  
22 and is a privately funded public accommodation or facility within the meaning of Health and  
23 Safety Code section 19955 et seq.

24 23. On or about June 10-11, 2003, Plaintiff confirmed that Coast Hair salon located at  
25 1224 Camino Del Mar is in violation of Title 24. Coast Hair has a single ramp with a slope of  
26 14%, in excess of the maximum 8.33% allowed by Title 24. That ramp further ends in a parking  
27 lot with no accessible parking in violation of Title 24. Coast Hair is subject to the jurisdiction of  
28 Defendant City Council and is a privately funded public accommodation or facility within the

1 meaning of Health and Safety Code section 19955 et seq.

2 24. On or about April 8, 2003, Plaintiff confirmed that Sbicca Bistro located at 215 15th  
3 Street did not comply with Title 24, because the restrooms do not have a 60 inch clear floor space  
4 as required by Title 24. Sbicca Bistro is subject to the jurisdiction of Defendant City Council and  
5 is a privately funded public accommodation or facility within the meaning of Health and Safety  
6 Code section 19955 et seq.

7 25. On or about June 10-11, 2003, Plaintiff confirmed that the Del Mar City Hall located  
8 at 1050 Camino Del Mar is in violation of Title 24. The Del Mar City Hall has a ramp leading to  
9 restrooms that measures in excess of a 10% slope in violation of Title 24. The ramp also lacks  
10 handrails or warning signs regarding the excessive slope as required by Title 24. Plaintiff is  
11 informed and believes and on that basis, alleges that the Del Mar City Hall is a facility that was  
12 constructed with the use of municipal funds after January 1, 1969.

13 26. On or about June 10-11, 2003, Plaintiff confirmed that the Life Guard Station  
14 located at Del Mar Beach is in violation of Title 24. The Del Mar Beach Life Guard Station has a  
15 public telephone that is inaccessible by persons in wheelchairs, due to its elevation on a tall,  
16 sloping and narrow porch in violation of Title 24. Plaintiff is informed and believes and on that  
17 basis, alleges that the Del Mar Beach Life Guard Station is a facility that was constructed with the  
18 use of municipal funds after January 1, 1969.

19 27. Building plans that are submitted to Defendant for approval are reviewed by  
20 Defendant to determine whether the designs contained in such plans comply with the requirements  
21 of Title 24. From about May to August, 2003, Plaintiff examined and reviewed approximately 35  
22 building plans for construction projects over which Defendant has jurisdiction under Health and  
23 Safety Code section 19955 et seq. The designs contained in these plans were approved by  
24 Defendant for compliance with the requirements of Title 24. As of September 2003, however, the  
25 designs contained in some of these plans were defective in that they failed to meet the  
26 requirements of Title 24, including but not limited to those respecting door widths, ramp slopes,  
27 and door handle types.

28 28. After building plans are approved by Defendant for design compliance with Title 24,

1 Defendant refers such plans to the County of San Diego for Title 24 construction compliance.  
2 From about May to August, 2003, Plaintiff examined and reviewed approximately 35 building  
3 plans for construction projects over which Defendant has jurisdiction under Health and Safety  
4 Code section 19955 et seq. These plans had been approved by the Defendant through the County  
5 of San Diego for construction compliance with the requirements of Title 24. As of September  
6 2003, however, some of these building plans were defective in that they failed to meet the  
7 requirements of Title 24 with respect to such items as site accessibility, parking lot details, path of  
8 travel, sanitary facilities, counter heights, dressing rooms, public telephones and drinking  
9 fountains.

10 29. As of September 2003, Defendant City Council uses and applies an obsolete 1993  
11 version of the Uniform Building Code and Title 24 under Del Mar Municipal Code ("DMMC")  
12 section 23.12.020A. Plaintiff is informed and believes, and on that basis, alleges that Defendant's  
13 use and application of this obsolete Code and Title 24 has contributed to its failure to meet its  
14 mandatory duty to enforce and comply with state disabled access laws and regulations.

15 30. The allegations contained in Paragraphs 1 through 28 above establish that Defendant  
16 has failed to carry out its mandatory duty to enforce Government Code section 4450 et seq.,  
17 Health and Safety Code section 19955 et seq. and the implementing regulations contained in Title  
18 24. Plaintiff is informed and believes, and based upon such information and belief alleges that  
19 Defendant's failure to meet such mandatory duty is due to defective or inadequate policies,  
20 practices, and procedures for preventing and correcting violations of Government Code section  
21 4450 et seq., Health and Safety Code section 19955 et seq. and Title 24, and the failure to  
22 provide adequate disabled access training to their employees who are responsible for disabled  
23 access enforcement. Complaints received by Defendant that allege deviations from Government  
24 Code section 4450 et seq., Health and Safety Code section 19955 et seq. and Title 24 are not  
25 adequately investigated and are not rectified within 90 days of the confirmation of a deviation, and  
26 building permits are being issued by Defendants for new construction and/or alteration projects  
27 which do not conform with Health and Safety Code section 19955 et seq. and Title 24.  
28 Publicly-funded facilities are being constructed and remodeled that do not comply with

1 Government Code section 4450 et seq. and Title 24. This failure to enforce Government Code  
2 section 4450 et seq., Health and Safety Code section 19955 et seq., and Title 24 and to do so in a  
3 timely manner has resulted in, and poses an unreasonable risk of, future violations of those laws  
4 and regulations.

5 31. Plaintiff is entitled to a writ of mandate ordering Defendant to carry out its  
6 mandatory duty to enforce Government Code section 4450 et seq. and Health and Safety Code  
7 section 19955 et seq.

8 32. Plaintiff is entitled to all costs incurred by him in the investigation that preceded the  
9 filing of this action and in prosecution of this action pursuant to Code of Civil Procedure section  
10 1021.8.

11 **NECESSITY FOR EQUITABLE RELIEF**

12 33. In view of the foregoing, and by the nature of the allegations, except as specifically  
13 pled above, there exists no adequate remedy at law. Further, the various violations of law alleged  
14 result in irreparable harm to the People of the State of California, and the balance of hardships  
15 weighs in favor of the People.

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27 **PRAYER**

28 Wherefore, the Attorney General requests the following relief:

1           1. For a writ of mandamus compelling Defendant to meet its mandatory duty to enforce  
2 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq. and Title 24.

3           2. For appointment of a monitor, selected by the Plaintiff, to oversee Defendant's  
4 implementation of the Court's orders;

5           3. For an award of costs incurred by Plaintiff in the investigation that preceded this action  
6 and in the prosecution of this action, including expert fees, reasonable attorney's fees, and other  
7 costs; and

8           4. For other equitable and legal relief as the Court deems appropriate.

9  
10 Dated: \_\_\_\_\_, 2003

BILL LOCKYER, Attorney General  
of the State of California  
LOUIS VERDUGO, JR.  
Senior Assistant Attorney General  
SUZANNE M. AMBROSE  
Supervising Deputy Attorney General

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17 Deputy Attorney General  
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19 California ex rel. Bill Lockyer, Attorney General  
20 of the State of California  
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VERIFICATION

I, Gloria L. Castro, declare:

I am a resident of the State of California and one of the attorneys who directed the investigation relating to the City of Del Mar for the matters set forth in the accompanying Petition for Writ of Mandate ("petition"). I have reviewed the factual allegations of the petition. Based on the information provided to me, I believe the allegations therein to be true, and on that basis verify that they are true.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003, in Los Angeles, California.

\_\_\_\_\_  
GLORIA L. CASTRO